Court No.2

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1) Criminal Appeal No. 842 of 2001
(Old No. 1723 of 1987)

1. Sri Khushal Singh S/o Chamu Singh,
2. Smt.Saraswati Devi W/o Khushal Singh,
   Both residents of Village – Leloo, P.S. – Pithoragarh,
   District – Pithoragarh.

…….. Appellants.

Versus

State of U.P. ……. Opp. Party.

And

(2) Criminal Appeal No. 843 of 2001

(Old No. 1724 of 1987)

Mahipal alias Mahesh Singh
S/o Khushal Singh,
R/o Village – Lello, P.S. – Pithoragarh,
District – Pithoragarh.

…… Appellant

Versus

State of U.P. …. Opp. Party.

Smt. Pushpa Joshi, learned counsel for the appellants,

Learned Goivernment Advocate for the State / respondent.

Date: 15-11-2006

Hon'ble P.C. Verma, J.
Hon'ble M.M. Ghildiyal, J.

(Delivered by Hon'ble P.C. Verma, J.)

The aforesaid criminal appeals arise out of the one and same judgment and the facts and evidence are common, therefore they are being disposed of together by this judgment. Criminal appeal No.842 of 2001 shall be the leading case.

2. These criminal appeals, preferred under Section 374 (2) to the Criminal Procedure Code, are directed against judgment and order dated 24.06.1987 passed by the then Sessions Judge, Pithoragarh in Sessions Trial No. 6 of 1987, whereby appellants Khushal Singh, his wife Smt. Sarswati Devi and son Mahipal Singh have been convicted under Section 302 of the Indian Penal Code read with Sec. 34 of the same Code and each of them sentenced to life imprisonment.

3. At the time of hearing, the learned counsel for the appellants submitted that appellant Khushal Singh died during the pendency of appeal. In this regard, a report was called for from the Chief Judicial Magistrate, Pithoragarh who sent his report dated 26.08.2006 about the death of the above named appellant. It reveals from the said report that appellant Khushal Singh died on 21.02.1993. Hence the appeal is dismissed as abated on behalf of Khushal Singh.

4. The prosecution case, as unfolded during the trial, is that on the fateful morning of 29.11.1986 the dead body of deceased Smt. Rukmani Devi of Village Lelu was lying on her bed. Accused Khushal Singh (father-in-law of deceased) called the Pradhan of the Village. He showed him the dead body. The Pradhan at his end as abundant caution asked one Karam Singh to inform the police about the suspicious death of Smt.Rukmani Devi. Thereafter Karam Singh prepared the written report (Ext.Ka-13) and lodged the same at 11.00 a.m. at Police Station Kotwali, Pithoragarh, G.D. entry of which is Ext.Ka-8. Sub Inspector Sri Tika Ram went to Village-

Lelu and inspected the room in double storeyed house of accused Khushal Singh where the dead body of Smt. Rukmani Devi was lying on a cot covered with woolen shawl. He removed the shawl from her body and inspected it. He considered that she had died under circumstances raising suspicion. He, therefore, called the respectable persons of the Village, appointed them *Panchas* and in their presence held the inquest on the dead body and prepared the inquest report Ext.Ka-10. The Police Sub Inspector and the *Panchas* were not definite about the actual cause of death . Therefore, he sent it to mortuary in sealed cover for post mortem examination. Ram Singh (P.W.3) father of the deceased Smt. Rukmani Devi had also reached the Village-Lelu. He witnessed the condition of the corpse and suspected that his daughter did not attain the natural death, but was done to death by her in-laws. Then on the same day i.e. 29.11.1986 at 01.00 p.m. he gave written report Ext.Ka-4 to the police.

5. On the basis of aforesaid written report of Ram Singh (father of the deceased) Head Moharir Lal Singh Bora (P.W.5) prepared the Chick F.I.R. and registered the case under Section 302 @ 498-A of the Indian Penal Code against the mother-in-law and brother-in-law of deceased Rukmani Devi. The Incharge of Police Station Sri R.A. Rathore, took the investigation of the case in his hand. He recorded the statement of complainant Ram Singh (P.W.3).

6. Dr.G.K.Sharma (P.W.4) conducted autopsy on the dead body of deceased at 11.0 A.M. on 30.11.1986.

On external examination he found that the deceased was a young lady of 23 years of average muscular built. He also found the rigor mortis passed off from the neck, upper extremities and trunk but was partially present in the lower limbs. The post mortem staining was present over dependent parts of the body. The face was swollen, tongue was protruding and bitten under teeth and oedematous blood forming was present in the nostrils and over and around the mouth. The food particles were present with blood. Eyes closed and swollen. Both pupils dilated. Faeces present in anus and out of it. Dr. Sharma also found following ante mortem injuries on the dead body:-

1. Abraded contusion in an area of 12 cm. Transversely X 8 cm. Vertically over right side of neck. Obliquely extending from right sterno mastoid process to downwards alongwith lower border of mandible upto middle of neck over thyroid cartilage. Crescentic 8 nail marks over the contusion. Colour was brownish.
2. Abrasion 2 cm. X 2 cm Over left side neck lateral side just below angle of mandible.

On internal examination Dr.Sharma (P.W.4) found underlying tissues of neck visible on cutting of ante mortem injury Nos. 1 & 2. He also found the tissue ecchymosis and about 15 cc of clotted blood escaped from wounds. The membranes slightly congested, brain congested. He also found pural membrane congested all over. Thyroid cartilage in middle part fractured in an area of 2.5 cm. X 0.5 cm. Trachial mucus membrane was congested and full of aspirated food particles. Both the lungs were congested and tarry blood escaped on cutting. Left chamber was empty and right was full of blood. The

stomach contained about 250 grams pasty material with food particles., Small intestine contained pasty material and gasses and large intestine contained faeces and gases. The gall bladder was empty. The uterus was non gravid. At the tie of post mortem examination Dr.R.P.Bhatt was also present and both the doctors opined that the death was due to asphyxia as a result of ante mortem injuries and occurred about two & half days before. They further opined that the death of the deceased may have occurred on the night of 28/29 Nov., 1986 and the ante mortem injuries as such might have been inflicted by throttling with both hands and which was sufficient in ordinary course of nature to cause the death of deceased. Dr.G.K.Sharma (P.W.4) prepared the post mortem report, which is Ext. Ka-7.

7. The case was transferred for investigation to Sri R.S.Nayal, Deputy Superintendent of Police. On 02.12.1986 he went alongwith police force to Village-Lelu. In the way complainant Ram Singh met him whom he also took with him. Khushal Singh, his wife Smt.Sarswati Devi and Mahipal Singh were arrested and taken into custody. They were individually interrogated by the Investigating Officer. Accused Khushal Singh informed the Police party that he had removed the Guloband and gold ear-rings from the person of deceased much before her death and he can produce them. On this the Investigating Officer Sri Nayal called Diwan Singh (P.W.7) and Jodh Singh to stands witnesses of the search to be made on the information of accused Khushal Singh. He handed over a bag of raksene Ext. 1, golden Gulobad Ext. 2 and ear-rings Ext.3 to the Investigating Officer.

Recovery memo Ext.Ka-11 was got prepared by S.I.Tika Ram,. The Police party got prepared site plan Ext.Ka-16 and then got the statement of witnesses recorded. On 24.12.1986 the I.O. again went to the Village-Lelu and got recorded the statement of some of the witnesses and on 28.12.1986 he got recorded the statement of complainant Ram Singh and his wife Smt.Dholi Devi in his office. On 03.1.1987 he recorded the statement of one Karam Singh. The I.O. also interrogated Bhuwan Singh, husbad of the deceased on the same day.

8. On completion of the detailed investigation, the police filed charge sheet Ext.Ka-17 against the accused persons for the commission of the offence punishable under Sections 302 & 498-A read with Section 34 of the Indian Penal Code and Section 4 of Dowry Prohibition Act.

9. The accused (appellants) were committed to the court of Sessions on 04.03.1987. They were charged for the offence under Sections 302 read with Section 34 & 498-A of the Indian Penal Code. All of them pleaded not guilty and claimed to be tried. The accused persons were discharged for the offence punishable under Section 4 of the Dowry Prohibition Act for want of sanction by the prosecution.

10. The prosecution with a view to bring the guilt of the accused persons to home examined as many as eight witnesses in the trial, namely Smt.Dhauli Devi (P.W.1)– mother of the deceased, Narendra Singh (P.W.2), Ram Singh (P.W.3)-father of the deceased,

Dr.G.K.Sharma (P.W.4), Head Moharir Sri Lal Singh (P.W.5), S.I. Sri Ganga Singh (P.W.6), Diwan Singh (P.W.7) and Deputy Superintendent of Police Sri R.S.Nayal- I.O. (P.W.8) in support of its case.

11. Prosecution witnesses proved the papers filed by the prosecution in the case, Exhibit Ka-1 to Exhibit Ka- 18 . Learned counsel for the defence admitted the genuineness of the papers (Ext.Ka- 19) to Ext.Ka-23), Panchyatnama, Photo lash, sample seal, challan lash, letter sent o Chief Medical Officer regarding post mortem of the dead body of deceased.

12. After the close of prosecution evidence the accused were examined under Section 313 of the Criminal procedure Code. They all pleaded not guilty and stated that they were falsely implicated in this case, Accused Khushal Singh stated that Smt. Rukmani Devi was not killed by the house mates by throttling. He alleged that the character of the deceased was shabby. She used to run away in the night from the house, It is probable that her paramour had killed her in the room.

13. The accused in support of their defence examined Karan Singh as D.W. 1 who claimed to have been present at the time of engagement and also solemnization of marriage and has stated that accused Khushal Singh had none of the occasions demanded dowry. He specifically denied the demand of 4 Tolas of gold by the accused Khushal Singh from the parents of deceased.

14. Learned Sessions Judge on the basis of his appreciation of the material on record accepted the prosecution version and found the appellants guilty for committing the murder of Smt.Rukmani Devi and accordingly convicted and sentenced them as mentioned above.

15. We have heard learned counsel for the appellants as well as learned Government Advocate appearing on behalf of the State. The record of the case has also been examined by us.

16. We may now proceed to examine the evidence of the prosecution witnesses. P.W.1 Smt.Dhauli Devi, the mother of the deceased Smt.Rukmani Devi, has stated about the atrocities committed on her by her in-laws. She further stated that whenever the deceased came to her house, she used to complain against her in-laws. She never mind it and used to sent her back to her in-laws house either with Bhuwan Singh, her husband or Mahipal Singh, her brother-in-law. She has further stated that about 5 months before her death she went to her in-laws house with her husband and in the month of Aghan, she heard about her death.

17. P.W.2 Narendra Singh did not support the prosecution case and was declared hostile.

18. P.W.3 Ram Singh, the father of deceased, supported the version of his wife Smt.Dhauli Devi P.W.1. He stated that the deceased apprehends danger to her life. He believed that she did not die of her own death,

but was murdered and he, therefore, lodged written F.I.R.Ka- 1 at p Station Kotwali Pithoragarh.

19. P.W.4 is Dr.G.K.Sharma who conducted the post mortem on the dead body of deceased Rukmani Devi. He proved the post mortem report Ext.Ka-7 Prepared by him.

20. P.W.5 Head Moharir Sri Lal Singh proved the G.D. Ext.Ka-8, Ext.Ka-10 and chick F.I.R. Ext.Ka-9 P.W.6 S.I. Sri Ganga Singh is the witness of recovery of ornaments i.e. golden *Guloband* and ear-rings Exts. 2 & 3. He also proved the recovery memo Ext.Ka- 11 prepared by S.I. Tika Ram on the spot on the dictation of Investigating Officer Sri Nayal.

21. P.W.7 Diwan Singh is Pradhan of Village-Lelu. He stated that in the month of March 1986 he received registered letter from Ram Singh, the father of deceased, in which it was written that he should convince accused Khushal Singh and Smt.Sarswati Devi, not to take work beyond her capacity and also not maltreat their daughter. He further stated that he called Khushal Singh and his wife Smt.Sarswati Devi and persuaded them to behave properly with Rukmani Devi. He further stated that he showed that letter to Bhuwan Singh, the husband of the deceased. He also stated that on getting information from accused Mahipal Singh he went to the house of accused persons and saw the dead body of deceased lying on the cot. He called Karam Singh to inform about the death of the deceased to Police. The

Witness proved the report Ext.Ka-13 lodged by Karam Singh at P.S.Kotwali Pithoragarh.

22. P.W.8 Sri R.S.Nayal, Deputy Superintendent of Police is the Investigating Officer. He proved the recovery of ornaments Ext. 2 and Ext.3 from the raksene bag Ext. 1 on the information of accused Khushal Singh, He also proved the recovery memo Ext.Ka.11.

23. The above evidence shows that there is no direct evidence of the eye witnesses to prove the involvement of the accused persons in the commission of the offence of murder of Smt.Rukmani Devi. The entire prosecution case is based on circumstantial evidence.

24. The conviction and sentence awarded to the appellants have been assailed on the grounds canvassed before us by learned counsel who appeared for them. It was contended that the judgment of conviction and sentence is against the weight of evidence on record and is also bad In law. As the case of the prosecution is based upon circumstantial evidence it was argued that the circumstances were insufficient to connect the accused with the commission of the crime. The circumstances alleged against the appellants are stated to have not been proved on facts and even if proved, did not connect them with the commission of crime. The learned trial court has based conviction of the appellants on the sole ground that it is clear from the facts and circumstances that the accused persons and also Bhuwan Singh-husband of deceased were not happy with the deceased and wanted to get rid of her and this would have been the motive for

the commission of the offence. The trial court has also recorded finding that the motive alleged by the prosecution could not be fully established and also the perusal of the recovery memo Ext.Ka- 11 and the evidence of independent public witness Sri Diwan Singh-P.W.7 show that the *Guloband*, Ext.2 and ear rings, Ext.3 were not recovered from Khushal Singh in the manner alleged by the prosecution but they were taken by the Investigating Officer from his bed room. The narration in the recovery memo Ext.Ka- 11 which does not complete the chain of circumstantial evidence, itself is a strong ground to hold that the prosecution is not giving the true and unvarnished facts. The trial court also recorded finding that it is not in evidence that at any stage the dead body was removed from the bed and again laid thereon. Had the assailant been the outsider, he would not have settled the dead body in the above manner. He would have left is as it was at the time of struggle. This can only be possibly done by the inmates of the house, as they were only the accused persons in the particular night. This finding is based on presumption. The site plan Ext.Ka- 16 clearly shows that the room in which the deceased found dead is all together separate from the house of the inmates but the trial court gave its finding that one person could not have been able to control and throttle her in the manner that no Injury of resistance occur on her person. This may be possible only when one person caught hold of her leg and the other hands while the third one caught hold of her neck from behind pressing all the eight fingers along the thyroid cartilage. This finding is also without any evidence on record rather it has come in evidence that the outer stair is the only

way to approach the room. It has also come in the evidence that deceased Smt.Rukmani Devi used to sleep all alone in the room. This room is not connected with the other portion of the house. The deceased must have slept bolting the room from inside and none could have entered the room unless she permitted by unbolting the room from inside. The trial court has drawn adverse inference that this can only be possibly done by the inmates of the house as they were only the accused persons in the particular night. We find force in the argument of the learned counsel for the appellants that had the accused persons got the door opened, she would have been caught standing. The throttling would not have been possible, so much so the ligature mark would have not appeared as was found by the doctor. Markes of resistance must have been found on the persons of the deceased and also in the bed.

25. The Investigating Officer has also admitted in cross-examination that the dead body of the deceased was found in the room on the first floor of the house. The approach to this room is only through stair along the eastern wall. There is possibility that somebody could have entered into the room of Rukmani Devi and throttled her. The trial court has drawn inference that it is probable that the deceased after taking meal went to her room and lay down just to relax for a while without closing the door and in the meantime the accused persons entered before she went to sleep after closing the door. This finding is based on presumption. There is no evidence in the case to link this circumstance.

26. Normally there is motive behind every criminal act and that is why the investigating agency as well as the court while examining the complicity of an accused try to ascertain as to what was the motive on the part of the accused to commit the crime in question. Absence of motive may not be relevant where the evidence is overwhelming, but in a case which is based on circumstantial evidence, motive for committing the crime assumes greater importance. Thus, in cases of circumstantial evidence, it should always be the endeavor of the court to ascertain what was the immediate impelling motive on the part of the accused which led him to commit the crime.

27. We have very carefully gone through the prosecution evidence on this point and are constrained to note that the immediate impelling motive supplied by the prosecution for committing the crime is not proved. In a case based upon circumstantial evidence, the prosecution is under a legal obligation to prove that the circumstances from a complete chain which lead to the irresistible conclusion that the accused are guilty and such circumstances are inconsistent with their innocence. On proof of the aforesaid conditions, the court can convict the accused of the charges farmed against them.

28. Our observations made above lead us to a definite and legitimate inference that the prosecution has utterly failed to prove its case against the appellant beyond reasonable doubt; rather the hypothesis put forward by the prosecution to bring home the guilt of the

appellants is based merely on conjectures and suspicion. Our judicial conscience is not satisfied that the circumstances of the case are so established that there is no escape from the conclusion that within all human probability the crime was committed by the appellants and none else. We have already observed that the evidence regarding motive and recovery of golden ornaments on the pointing out of accused Khushal Singh does not inspire confidence and has to be rejected.

29. In view of above discussions, the appellants Smt.Sarswati Devi and Mahipal Singh are entitled for acquittal, as the charges do not stand proved against either of them beyond reasonable doubt. Therefore, the appeal is allowed and the conviction and sentence of life imprisonment to the appellants is set aside.

30. A copy of this judgment be kept in the file of Criminal Appeal No. 843 of 2001 (Old No. 1724 of 1987) and record of trial court be sent back alongwith a copy of this judgment.

(M.M.Ghildiayl, J.) (P.C. Verma, J.)

P.Singh